

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ELISEO CALDERON,)	
)	
Plaintiff,)	
v.)	Case No. 1:14-cv-976-SEB-TAB
)	
UNITED STATES DISTRICT COURT,)	
SOUTHERN DISTRICT OF INDIANA,)	
)	
Defendant.)	

Entry Discussing Action and Directing Further Proceedings

I.

The plaintiff's motion to proceed *in forma pauperis* [dkt. 2] is **granted**. The plaintiff is assessed an initial partial filing fee of Three Dollars and Forty Cents (\$3.40). He shall have **through July 21, 2014**, in which to pay this sum to the clerk of the district court.

II.

The Court has screened the complaint pursuant to 28 U.S.C. ' 1915A(b). This statute directs that the Court dismiss a complaint or any claim within a complaint that "(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." *Id.* "A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief." *Jones v. Bock*, 549 U.S. 199, 215 (2007).

Eliseo Calderon is currently incarcerated at the Eden Detention Center in Eden, Texas. He filed this civil rights action under 42 U.S.C. § 1983 challenging an Indiana state criminal conviction. He seeks compensation for the time he spent in prison and he wants to be able to regain his residence in the United States that he allegedly lost as a result of that conviction. He

seeks to bring a claim of ineffective assistance of counsel. He also challenges the sufficiency of the evidence. The Court takes judicial notice of the cause number of the state action, No. 49 G05 0305-PC-084898. It is unclear yet possible that Mr. Calderon has already served his sentence for the state conviction at issue in this case.

Mr. Calderon names as the sole defendant Judge Nancy L. Broyles of the United States District Court. Judge Broyles is not a judge in this District. She is a former Commissioner with the Indiana Superior Court. In addition to this misidentification, any judge has absolute judicial immunity from claims that arise out of disagreements with rulings. *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (“Judicial immunity is an immunity from suit, not just from ultimate assessment of damages.”).

Moreover, Mr. Calderon does not allege that his state conviction was reversed, invalidated, or expunged on any basis. Therefore, his claims are barred by the principles set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994). A prisoner's § 1983 claims are not cognizable when “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Id.* at 487. If the Court were to conclude that there was insufficient evidence to support his conviction, such a judgment would imply the invalidity of his conviction. Therefore, under *Heck*, Mr. Calderon's claims are barred.

III.

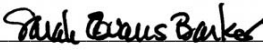
Mr. Calderon's complaint is **dismissed** as a matter of law for failure to state a claim upon which relief can be granted. He shall have **through July 21, 2014**, in which to **show cause** why this action should not be dismissed for failure to state a claim. *See Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022 (7th Cir. 2013) (“Without at least an opportunity to amend or to respond to an order to show cause, an IFP applicant's case could be tossed out of court without

giving the applicant any timely notice or opportunity to be heard to clarify, contest, or simply request leave to amend.”). Failure to show cause as directed will result in the dismissal of the action for failure to state a claim upon which relief can be granted.

The clerk shall **update the docket** to reflect the spelling of Mr. Calderon’s last name.

IT IS SO ORDERED.

Date: 06/16/2014



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

Eliseo Calderon
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Eden Detention Center
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Financial Deputy Clerk

NOTE TO CLERK: PROCESSING THIS DOCUMENT REQUIRES ACTIONS IN ADDITION TO DOCKETING AND DISTRIBUTION.